

STATE OF NEW HAMPSHIRE
BOARD OF PHARMACY

April 20, 2005

A regular meeting of the New Hampshire Board of Pharmacy was held on **April 20, 2005** at the Board office, 57 Regional Drive, Concord, New Hampshire. The meeting was **called to order at 9:02 a.m.** with President Margaret E. Hayes presiding.

I. ROLL CALL - AGENDA REVIEW - ANNOUNCEMENTS

PRESENT

Margaret E. Hayes, President
Kristina Genovese, Vice-President
George L. Bowersox, Treasurer
Sandra B. Keans, Secretary
Vahrij Manoukian, Member
Ronald L. Petrin, Member

ALSO PRESENT

Paul G. Boisseau,
Executive Secretary
Peter A. Grasso,
Chief Compliance Investigator
Carl T. Kelly,
Compliance Investigator

II. REVIEW/ADOPTION OF MINUTES

Minutes of the **February 2, 2005 special meeting** of the Board were accepted as submitted. **(Manoukian/Bowersox). Voted (unanimous).**

Minutes of the **February 16, 2005 regular meeting** of the Board were accepted as submitted. **(Manoukian/Petrin). Voted (unanimous).**

Minutes of the **March 16, 2005 regular meeting** of the Board were accepted as submitted. **(Manoukian/Petrin). Voted (unanimous).**

III. LICENSING

A. **Pharmacist**

1. Disciplinary

(a) **SANTORO, Michael**
Methuen, MA
NH License No. 3293

Motion (Bowersox/Manoukian) to accept *Settlement Agreement* signed by Mr. Santoro on March 23, 2005. Voted (unanimous).

2. Report of Investigation

(a) **CASE FILE: ROI 11/05**

- Compliance Investigator's *Report of Investigation* dated March 15, 2005.

Motion (Genovese/Bowersox) to forward this complaint (filed by a consumer), and applicable documents and "evidence", to the U.S. Food and Drug Administration for further investigation. Voted (unanimous).

(b) **CASE FILE: ROI 13/05**

- Compliance Investigator's *Report of Investigation* dated March 15, 2005.

Motion (Genovese/Keans) to proceed in the development of a proposed *Settlement Agreement* with the pharmacist identified as "R #1" in the ROI. Voted (unanimous).

Motion (Genovese/Keans) to issue a confidential *Letter of Concern* to the pharmacist identified as "R #2" in the ROI. Voted (unanimous).

The Board dismissed any disciplinary action against the permit holder, in this case a corporate entity.

(c) **CASE FILE: ROI 14/05**

- Compliance Investigator's *Report of Investigation* dated March 17, 2005.

Motion (Keans/Bowersox) to issue a confidential *Letter of Concern* to the staff pharmacist identified as "SD" in the ROI. Voted (unanimous).

(d) **CASE FILE: ROI 16/05**

- Compliance Investigator's *Report of Investigation* dated March 17, 2005.

Motion (Manoukian/Keans) to issue a *Notice of Hearing* to the staff pharmacist identified as "BB" in the ROI. Voted (failed).

Motion (Genovese/Bowersox) to proceed in the development of a proposed *Settlement Agreement with the staff pharmacist identified as "BB" in the ROI. Voted (unanimous).**

** Commissioner Manoukian was assigned to work with CCI Grasso, the*

AG's Office, and the Respondent (pharmacist) in the development of a proposed Settlement Agreement for review and disposition by the Board.

B. Pharmacy Technician

1. Voluntary Surrender

(a) CASE FILE: ROI 03/05

SPENCER, Kenneth P.
Manchester, NH
NH Registration No. PT3513

Motion (Genovese/Keans) to accept the Voluntary Surrender of pharmacy technician Kenneth P. Spencer's registration (No. PT3513) effective immediately. Voted (unanimous).

2. Report of Investigation

(a) CASE FILE: ROI 19/05

- Hearing Counsel's *Report of Investigation* dated March 22, 2005.

Motion (Keans/Bowersox) to issue a confidential *Letter of Concern* to the Respondent (pharmacy technician) identified as "CS" in the ROI. Voted (failed – Commissioner Genovese recused).

Motion (Petrin/Keans) to proceed with the development of a *Settlement Agreement with the pharmacy technician identified as "CS" in the ROI. Voted (passed – Commissioner Genovese recused).****

** Commissioner Bowersox was assigned to work with CCI Grasso, the AG's Office, and the Respondent (pharmacy technician) in the development of a proposed Settlement Agreement for review and disposition by the Board.*

***The Board office was later notified by the AG's Office that a Notice of Hearing, with the option for a Settlement Agreement, needed to be issued first in order to proceed. [Ph 805.01(a) of the NH Code of Administrative Rules]. This item will be reconsidered for correction on May 18, 2005.*

(b) CASE FILE: ROI 12/05

- Compliance Investigator's *Report of Investigation* dated April 7, 2005.

Motion (Genovese/Bowersox) to request a *Voluntary Surrender* of registration, to be received at the Board office no later than May 6, 2005, by the pharmacy technician identified as "the technician" in the ROI. Failure to receive the *Voluntary Surrender* by the stated deadline will automatically result in the issuance of a *Notice of Hearing*. Voted (unanimous).

(c) **CASE FILE: ROI 15/05**

- Compliance Investigator's *Report of Investigation* dated March 18, 2005.

Motion (Bowersox/Keans) to proceed with the development of a proposed *Settlement Agreement with the permit holder (corporate entity) as referenced in the ROI. Voted (unanimous).**

** Commissioner Bowersox was assigned to work with CCI Grasso, the AG's Office, and the Respondent (corporate entity) in the development of a proposed Settlement Agreement for review and disposition by the Board.*

C. Pharmacy

1. New

(a) HANNAFORD PHARMACY #16

35 Manchester Road, Route 28
Derry, NH 03038

Pharmacist-In-Charge: **Richard J. Lavoie, R.Ph**
NH License No. R0968

Corporate Officer/Supervisor: **Robert Stout, R.Ph.**
Assistant Pharmacy Operations Manager

Application complete.

Motion (Keans/Manoukian) granting a temporary permit to Hannaford Pharmacy #16 located at 35 Manchester Road, Derry, NH based upon successful completion of the primary inspection, and issuance of the original permit upon successful completion of the secondary inspection pursuant to Ph 305.02. Voted (unanimous).

(b) HANNAFORD PHARMACY #185

6 Hampton Drive
Londonderry, NH 03053

Pharmacist-In-Charge: **Nicole J. Rocha, R.Ph**

NH License No. 3409

Corporate Officer/Supervisor: **Anthony J. Pollano, R.Ph.**

Assistant Pharmacy Operations Manager

Application complete.

Motion (Keans/Petrin) granting a temporary permit to Hannaford Pharmacy #185 located at 6 Hampton Drive, Londonderry, NH based upon successful completion of the primary inspection, and issuance of the original permit upon successful completion of the secondary inspection pursuant to Ph 305.02. Voted (unanimous).

2. Change in Ownership

(a) **EASTMAN'S PHARMACY**

22 South Main Street
Hanover, NH 03755

Pharmacist-In-Charge: Melissa Ann Knight, R.Ph

NH License No. 2884

Corporate Officer/Supervisor: Same As Above

Application complete.

Motion (Keans/Petrin) to approve the change of ownership of Eastman's Pharmacy located at 22 South Main Street, Hanover, NH and to grant licensure effective on the date of ownership transfer.

3. Motion to Reconsider

COLONIAL PHARMACY, INC.

247 Newport Road
New London, NH 03257
NH Pharmacy Permit No. 0313
Docket No. 05-009

Randall W. Doerr, R.Ph., Pharmacist-In-Charge

DIABETIC SUPPLIES INTERNATIONAL, INC.

37 Blaisdell Hill Road
South Sutton, NH 03273

NH Wholesaler/Distributor Permit No. 3931
Docket No. 05-010

Emilio Cancio-Bello, DSI President

The Board reviewed and discussed Hearing Counsel's *Motion to Reconsider* relative to the above-referenced Docket Numbers and a *Hearing* held on January 19, 2005 as well as the Board's *Decision and Order* which was issued on February 28, 2005.

Motion (Keans/Bowersox) to deny Hearing Counsel's *Motion to Reconsider* based on the following:

- 1. Hearing Counsel's Motion was not filed within 30 days of the date of the Board's *Decision and Order*, according to Ph 205.01(c) of the NH Code of Administrative Rules;**
- 2. There is no recognized process in Chapter Ph 200– Practice and Procedure, of the NH Code of Administrative Rules, which provides for the Board to “reconsider” a past (and existing) adjudicative action and an appeal can only be heard by the NH Supreme Court; and**
- 3. Even if the Hearing Counsel's intent was to request a re-hearing on these Dockets, the Board finds that no new evidence was provided by Hearing Counsel which would compel such an exercise. Voted (passed – Commissioner Petrin recused).**

IV. COMPLIANCE UNIT

A. **Activity Report**

- March 2005

Motion (Genovese/Keans) to accept the report as submitted. Voted (unanimous).

V. NEW BUSINESS

A. **Ph 303.02 – NH Code of Administrative Rules**

- Request for Review and Clarification – “P” Stores.

Tabled for further consideration and possible amendment of the existing rule.

B. Rulemaking

- Proposed Amendments to the NH Code of Administrative Rules.

The Board elected to schedule a public hearing, for comment on proposed rules, on June 15, 2005 at 10:00 a.m.*

** Staff will recommend that the public hearing be rescheduled to July 20, 2005 in order to allow for the timely discussion and consideration of several other possible amendments.*

C. Pharmacist Ethics – Emergency Contraception

Members of the Board endorsed SB30 which would establish the Collaborative Practice for Emergency Contraception Act. Under this bill, a pharmacist may initiate emergency contraception drug therapy in accordance with procedures developed by the NH Board of Pharmacy and a physician or other authorized prescriber who is acting within his/her scope of practice.

The Board notes that there are no provisions in NH law with regard to a “conscience clause” for pharmacists. The Board advises, however, that pharmacists who object to, or refuse to participate in EC services, should refer the patient to another staff pharmacist on duty or otherwise, refer the patient to the nearest pharmacy where such services may be available.

D. Electronic Transmission (by Fax) of Prescription Information

- Tabled for further consideration and possible amendment (or waiver) of Ph 704.03 (b)(2) and (d).

E. Joint Health Council – Request for Appointment

1. David P. LaCoste, Pharm.D.

253 Chapman Road
Keene, NH 03431

2. Paul D. Santos, Pharm.D.

548 Steele Hill Road
Sanbornton, NH 03269

Motion (Bowersox/Genovese) to appoint David P. LaCoste, R.Ph., Pharm.D. (NH License No. 2139) and Paul D. Santos, R.Ph., Pharm.D. (NH License No. R1503) to serve on the NH Joint Health Council according to the provisions

of NH RSA 326-B:10-a effective July 23, 2005 for 3-year terms ending July 22, 2008. Voted (unanimous).

Drs. LaCoste and Santos succeed Drs. Wayne Dutch and Steven Whitcomb.

VI. ADJOURNED 11:58 A.M.

Respectfully submitted,

Sandra B. Keans
Secretary
FOR THE BOARD